IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2459 of 1999

Hon'ble MR.JUSTICE Y.B.BHATT

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HP JOSHI SECRETARY OF PROPOSEDBANSHARI SARKARI KARMACHARI

Versus

STATE OF GUJARAT

Appearance:

MR DC DAVE for Petitioner

MR SJ DAVE, AGP, DS for Respondent No. 1

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 29/06/1999

ORAL JUDGEMENT

1. This petition was admitted on 9th April 1999 and Rule was made returnable within two weeks. Respondent-State was, therefore, served within the aforesaid two weeks. Until this Special Civil Application was taken up for final hearing today, no affidavit-in-reply has been filed on behalf of the

respondent State. However, I have considered the submissions and contentions of learned counsel for the State and also the averments made by him on questions of fact, based on instructions received by him in the form of parawise comments.

2. There is no controversy as to the following facts.

2.1 The petitioner is a cooperative housing society whose members are working in the government, and semi-government bodies. For the purpose of construction of residential houses, an application was submitted to the appropriate authority for allotment of government land under section 23 of the Urban Land (Ceiling and Regulation) Act, 1976. This was followed by another application wherein allotment was specifically sought in respect of survey no.88/Part. This was followed by another application dated 8th April 1992 (Exh.B) wherein the applicants changed the request from allotment of survey no.88/Part to allotment in respect of survey nos.85/1 and 85/2. This is the relevant and pertinent application which is required to be considered for the purpose of the present petition. Thereafter the petitioners made further representations from time to time both to the Hon'ble Minister incharge of the Revenue Department as also to the officers who were dealing with such requests under section 23 of the said Act. Concerned officers also called for certain information from the petitioners. A number of such representations were made and the common theme running through all such representations is that the request made by the petitioners for grant of land for the purposes specified (and which would qualify under section 23) may kindly be expedited and the grant be made expeditiously. It may be that in the different representations made from time to time, merely with a view to expedite the process of allotment the petitioners may have stated that if the specified land is not available for any reason, any other land may be allotted. However, nothing much turns upon this aspect inasmuch as the petitioners have not at any point of time given up their request for being allotted survey nos.85/1 and 85/2 nor have they at any point of time specified that instead of the aforesaid numbers another specified survey number be allotted to them. In short, therefore, the application dated 8th April 1992 at Exh.B was the only substantive application which was under consideration of the respondent at all material times. Subsequent representations were also made pointing out that unreasonable delay in deciding the application for allotment merely results in rise in

market value of the lands in question and this is extremely prejudicial to the applicant. Even as late as 6th October 1995 (Exh.L) the petitioners were informed that the issue of allotment of land is under active consideration.

2.2 Thereafter it appears that respondent had by Exh.M dated 16th April 1996 conveyed to the petitioners that the land of survey no.85/1 is proposed to be disposed of by a public auction and therefore the request of the society cannot be acceded to. It is pertinent to note at this stage that the application made by the petitioner was in respect of survey no.85/1 and 85/2 whereas Exh.M. ruled out only the allotment of 85/1, and was completely silent as to 85/2. Thus, even if this view expressed in Exh.M were accepted at its face value, the application of the petitioner cannot be said to have been rejected in toto.

2.3 However, subsequent representation made by the petitioner appears to have led the respondent to reconsider the view expressed in Exh.M, and Exh.O dated 11th July 1996 as also under Exh.R dated 20th January 1997 only lead to a conclusion that the original application of the petitioner was deemed to have been revived, and was under active consideration.

2.4 It was as late as 26th February 1999 (Exh.S) that the petitioners were informed that they should give their consent to take the land at the prevailing market rate, in the context of its original application dated 8th April 1992.

2.5 During the course of hearing and discussion it is sought to be clarified as to what is the prevailing market rate in the contemplation of the respondent, and to which date of valuation such figure is attributable. In this context learned counsel for the respondent clarifies that the market rate contemplated by the respondent is Rs.3000/- per square meter and this is the prevalent market rate as on 2nd November 1995.

3. On these facts the controversy in the present petition is as to whether the respondent, while making allotment of the land under section 23 of the said Act, would be justified in making the offer at a market value which is years after the date of the application.

4. This question is completely concluded by a decision of this court in the case of Ashutosh Coop. Housing Society Ltd. Vs. State of Gujarat, reported at

36(2) GLR 1419. This decision has also been followed in another decision of this court rendered in Special Civil Application No.486/99 by judgement and order dated 5th February 1999.

5. It may also be noted that the case of Ashutosh Coop. Housing Society Ltd. (supra) was taken to the Supreme Court by way of SLP No.4846/95 by the State of Gujarat, and the dismissal of the said SLP on 3rd April 1995 has confirmed the decision of this High Court.

6. I do not consider it necessary to reiterate the principles laid down therein, which are contained in paragraphs 5 to 9 of the said decision. The basic principle is that when an allotment (or offer to make an allotment) is made in favour of an applicant, which is governed by the guidelines issued and adopted by the State Government for such allotment under section 23 of the said Act, the price at which the land is offered must be the prevailing market value on a date which is in reasonable proximity with the date of the application. In other words, merely because there is administrative delay in dealing with the petitioners' application, or even while dealing with the petitioners' application together with similar applications, such administrative delay cannot be permitted to work to the prejudice of the applicants.

7. On the facts of the case on a plain reading of the decision of the Government at Exh.S dated 26th February 1999 would appear to be an offer to allot the land to the petitioners at the prevailing market rate on the date of the communication i.e. the market rate prevailing in February 1999. However, even if the parawise remarks, which are the basis of instructions of learned counsel for the respondent, are construed in a manner most beneficial to the petitioners, it would nevertheless indicate that the market value of Rs.3000/per square meter is a valuation arrived at by the respondent on 2nd November 1995. In my opinion even this valuation date is too far remote from the date of the application to be considered reasonable. It may also be pointed out here that in the subsequent decision of this court in Special Civil Application No.486/99 (supra) a period of 4-6 months was considered reasonable. However, there cannot be any hard and fast rule about what can be considered to be a reasonable period. On the facts and circumstances of the case it does appear that there were change of circumstances during the intervening period when the petitioners' application was pending disposal, and that the respondent had called upon the petitioners

to submit additional information from time to time. On the other hand, it cannot be held that merely by keeping the line of correspondence open and by continuing to raise queries from time to time, would absolve the respondent authorities from the responsibility and obligation to decide the application expeditiously and within a reasonable period. It would, therefore, appear on the facts of the case that under the circumstances prevailing at that point of time it may not have been possible to dispose of the application within 4 to 6 months. As aforesaid there cannot be any hard and fast guideline and/or precise determination as to what should be considered a reasonable period on the facts of a given case. On the facts of the present case, on a specific query being put to learned counsel for the petitioners, he submits that for the purpose of determination of the market value, a period of 8 to 12 months after the date of the application would, according to him, be reasonable. In the context of this submission on behalf of the petitioners, learned counsel for the respondent is unable to suggest any particular period or date on the basis of which the market value may be determined.

8. However, considering the facts and circumstances of the case it appears to be just and equitable to direct the respondents to determine the market value of the land offered to the petitioners prevailing in June 1993. It is accordingly so directed.

9. This petition is accordingly partly allowed. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.

****